

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GINA ANNE NOEL PANE,

Plaintiff

Case No.: 07 CV 3216
(WP4) (CMS)

-against-

THE TOWN OF GREENBURGH, JOHN KAPCIA,
in his capacity as Chief of the Greenburgh Police
Department, ERIK WARD, POLICE OFFICER
MICHAEL MUESSER, SERGEANT ROBERT
GRAMAGLIA, SERGEANT FRANCIS PUMILLO,
DETECTIVE PAUL FERTIG, POLICE OFFICER
DANIEL MASSETT, POLICE OFFICER EDWARD
OLSEN, JOHN DOE POLICE OFFICERS 1-10 so
named as their identities have yet to be established,

Defendants.

ANSWER TO
AMENDED
COMPLAINT

-----X
The Defendants, Michael Muesser, Sergeant Robert Gramaglia, Sergeant Francis
Pumillo, Detective Fertig, Police Officer Daniel Massett, Police Officer Edward Olsen
and John Doe Police Officers 1-10, by their attorney, Thomas J. Troetti, Esq., answering
the Complaint states as follows:

FIRST: Denies knowledge or information sufficient to form a belief as to the
allegations set forth at those paragraphs designated "11," "14," "25," "28," "29," "52,"
"53," "54," "55," "66," "67," "68," "69," "70," "72," "74," "101," "108," "109," and
110."

SECOND: Denies the allegations of those paragraphs designated "2," "3," "4,"
"5," "27," "30," "31," "32," "33," "34," "35," "36," "38," "39," "40," "41," "42," "43,"
"44," "45," "46," "47," "49," "51," "56," "57," "58," "59," "60," "61," "62," "63," "64,"
"65," "71," "73," "75," "76," "77," "78," "79," "81," "82," "83," "84," "86," "87," "88,"

“89,” 91,” “92,” “93,” “94,” 96,” “97,” “98,” “100,” “102,” “103,” “105,” “107,” “112,”
“115,” “116,” “117,” “118” “120,” 121,” “125,” 128,” 129,” “131,” “132,” “134,” “136,”
“137,” “138,”

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations set forth at those paragraphs designated “1,” “6,” “7,” “8,” “9,” “10,” “15,” “23,” “24,” “50,” “122 and leaves all questions of law to the Court.

FOURTH: Admits the allegations of those paragraphs designated “12,” “13,” “26,” “48,”

FIFTH: Denies the allegations of those paragraph designated “16,” “17,” “18,” “19,” “20,” “21”, and “22” except to admit that Police Officer Muesser, Sergeant Robert Gramaglia, Sergeant Francis Pumillo, Detective Fertig, Police Officer Daniel Massett, Police Officer Edward Olsen and Police Officers John Does 1-10 were at the time of the events alleged in the Complaint employed by and working under the authority of the Town of Greenburgh.

SIXTH: Denies the allegations of paragraph “37” except to admit that Ms. Pane was transported by Police Office Muesser, in a Greenburgh Police Department vehicle, to Greenburgh Police Headquarters.

SEVENTH: Admits the allegations of paragraph “104” and “111” “130” but allege that the arresting officer did not need an arrest warrant.

EIGHT: Denies the allegations of paragraph “114” but alleges that based on a legally sufficient basis the plaintiff was arrested and subject to prosecution.

NINTH: Denies the allegations of paragraph “123” except to admit that all relevant times mentioned the answering defendants were acting in the scope of their employment as police officers employed by the defendant, Town of Greenburgh.

TENTH: Denies the allegations of paragraph “126” except to admit that the extent of physical contact with the plaintiff was limited to that necessary to arrest the plaintiff and process her.

ELEVENTH: Denies the allegations of paragraph “127” except to admit that when the plaintiff was arrested she was handcuffed.

TWELFTH: Denies the allegations of paragraph “133” except to admit that the plaintiff’s consent was not required to arrest and process her.

THIRTEENTH: The answering defendants repeat and reallage those allegations of the Answer to those paragraphs of the Complaint designated as “80,” “85” “90,” “95,” “99,” 106,” “113,” “119,” “124,” and “135.”

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

Any detention or arrest of the plaintiff was justified.

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

There was probable cause for the plaintiff’s arrest.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

The defendants, Police Officer Michael Muesser, Sergeant Robert Gramaglia, Sergeant Francis Pumillo, Detective Fertig Police, Officer Daniel Massett, Police Officer Edward Olsen and “John Doe” Police Officers 1-10 at all times acted in good faith and are protected from liability by qualified immunity.

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

The plaintiff's state law claims are barred by the applicable statute of limitations.

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

Any acts of these answering defendants which are alleged to have negligently caused any physical injury and/or emotional distress were caused by the plaintiff's own culpable conduct.

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

The plaintiff waived any right to sue the defendants for any claim arising out of her arrest, the prosecution of which did not terminate in her favor.

**AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE**

All claims of the plaintiff against Police Officer Daniel Massett and Police Officer Edward Olsen are barred by the applicable statute of limitations.

**AS AND FOR A CROSS-CLAIM AGAINST
THE DEFENDANT, TOWN OF GREENBURGH**

Pursuant to the Public Officer Law section 18 the defendant, Town of Greenburgh, is required to indemnify these answering defendants against any adverse judgment obtained by the plaintiff arising out of the scope of the answering defendants' employment, which acts alleged by the plaintiff as the basis of liability these answering defendants deny.

WHEREFORE, the answering defendants demand judgment dismissing the

Complaint, together with the costs and disbursements of this action.

DATED: White Plains, New York
May 27, 2008

Yours, Etc.,

s/
THOMAS J. TROETTI (7184)
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SERGEANT ROBERT GRAMAGLIA,
SERGEANT FRANCIS PUMILLO,
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